

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

A.M. TRUCKING & MOVING CORP.

and

Case 29--CA--15168

JOSEPH JOHNSON, an individual

*July 16, 1991*  
DECISION AND ORDER

*By Members Cascraft, Devaney, and Oviatt*

Upon a charge filed by Joseph Johnson, an individual, on September 10, 1990, the General Counsel of the National Labor Relations Board issued a complaint on October 29, 1990, against the Company, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although served with copies of the charge and complaint, the Respondent has failed to file an answer.

On May 1, 1991, the General Counsel filed a Motion for Summary Judgment. On May 3, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of

service, "all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated March 28, 1991, advised the Respondent that unless an answer was received by April 15, 1991, counsel for the General Counsel would file a Motion for Summary Judgment.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

At all times material, the Respondent, a New York corporation, with its principal office and place of business located at 128 Waverly Avenue, Brooklyn, New York, has been engaged in the repair, maintenance and reconditioning of refrigerators and refrigeration machinery. Annually, the Respondent, in the course and conduct of its business operations, performs refrigeration machinery repair and maintenance services valued in excess of \$50,000 in states other than the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

On two occasions about September 10, 1990, the Respondent, by Anoop Mukundan, its owner, president, and agent, threatened its employees with discharge if they joined, supported, or assisted the Union. Also about September 10, 1990, the Respondent, by Anoop Mukundan, threatened its employees with unspecified reprisals if they joined, supported, or assisted the Union.

Further, about September 10, 1990, the Respondent discharged its employee Joseph Johnson, because he joined, supported, and assisted the Union. Since on or about September 10, 1990, the Respondent has failed and refused to reinstate, or offer to reinstate, Joseph Johnson to his former position of employment, because he joined, supported, and assisted the Union.

We find that, by all the conduct described above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

We further find that, by discharging and refusing to reinstate Joseph Johnson, the Respondent has discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and that the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

Conclusions of Law

1. By threatening employees with unspecified reprisals if they joined, supported, or assisted the Union, and by threatening employees with discharge if they joined, supported, or assisted the Union, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. By discharging and refusing to reinstate Joseph Johnson for joining, supporting, or assisting the Union and in order to discourage employees from engaging in such activities or other concerted activities, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discharged Joseph Johnson, we shall order that the Respondent offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

We also shall order the Respondent to make Johnson whole for any loss of earnings and other benefits, plus interest, he may have suffered as a result of his discharge. Backpay shall be computed as set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We also shall order the Respondent to remove from its files any reference to the unlawful

discharge of Johnson and to notify him that this has been done and that the unlawful discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, A.M. Trucking & Moving Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals or discharge if they join, support, or assist Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, or any other labor organization.

(b) Discharging its employees, or otherwise discriminating against them, because they joined, supported, or assisted the Union, or any other labor organization, and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in union or other concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Joseph Johnson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Joseph Johnson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Remove from its files any references to the unlawful discharge of Joseph Johnson and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Brooklyn, New York facility copies of the attached notice marked "'Appendix.'"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 16, 1991

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Mary Miller Cracraft, Member

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Dennis M. Devaney, Member

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Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with unspecified reprisals or discharge if you join, support, or assist Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against you because you join, support, or assist the Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL offer Joseph Johnson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.



WE WILL notify Joseph Johnson that we have removed from our files any reference to his discharge and that we will not use the discharge against him in any way.

A.M. TRUCKING & MOVING CORP.

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(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 75 Clinton Street, Eighth Floor, Brooklyn, New York 11201-4201, Telephone 718-330--2862